



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Rockwell Collins Inc
Attention Kyle Eppele
400 Collins Rd NE
Cedar Rapids IA 52498

COPY MAILED

MAR 27 2009

OFFICE OF PETITIONS

In re Application of

Marilee G. Berry

Application No. 09/578,567

Filed: May 25, 2000

Attorney Docket No. 99PS014/KE

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181(a) to withdraw the holding of abandonment, filed March 9, 2009.

The petition under 37 CFR 1.181(a) to withdraw the holding of abandonment is **granted**.

This application was held abandoned on April 12, 2008, after it was believed that a proper response was received to the non-final Office action mailed January 11, 2008, which set a shortened statutory period for reply of three months from its mailing date. A Notice of Abandonment was mailed December 19, 2008.

Petitioner maintains that a proper and timely response to the non-final Office action was timely transmitted via facsimile on April 11, 2008. As evidence of the same, petitioner provides a copy of the response containing a certificate of transmission dated April 11, 2008, and a copy of Auto-Reply transmission sheet confirming twelve pages were received by a USPTO facsimile on April 11, 2008.

Petitioner's argument has been considered and is persuasive. Section 711.03(c) of the MPEP provides, in pertinent part, that:

Where a certificate of mailing under 37 CFR 1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 CFR 1.8(b) and MPEP § 512. As stated in 37 CFR 1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered into


PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 CFR 1.8).

A review of the copy of the response filed with the petition reveals that it contains a certificate of transmission dated April 11, 2008, that is signed by Shelia K. Mathews who also signed the petition document. Petitioner properly used the protections offered by 37 CFR 1.8 and is, therefore, entitled to assert that the response transmitted April 11, 2008, is timely by virtue of the certificate of mailing dated April 11, 2008, contained thereon. The petition is granted, accordingly.

The amendment filed March 9, 2009, is noted.

Further inquiries regarding this decision may be directed to the undersigned at (571) 272-3222.

The application file is being forwarded to Technology Center GAU 2421 for further processing including review of the amendment first filed April 11, 2008, a copy of which was filed with the instant petition.


Kenya A. McLaughlin
Petitions Attorney
Office of Petitions